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ABSTRACT

The Youth Law Center is a public interest law office whose primary activity has been the Juvenile Justice Legal Advocacy Project. The center has developed a specific procedure for investigating and negotiating juveniles justice problems which involves resolution through negotiation without resorting to litigation. Effective advocacy requires research of all applicable laws; meeting with court judges, government officials, and legal services attorneys; and on-site visits to facilities such as jails and detention centers. This project tries to confront problems: (1) affecting the greatest numbers of children; (2) involving the greatest mistreatment of children; (3) whose resolution will have impact beyond the specific problem; and (4) whose resolution can be accomplished in a reasonable amount of time. A series of alternative solutions needs to be developed and advocates need to negotiate with public officials. Litigation should be used only as a last resort since it is often counterproductive. Litigation is the ultimate weapon but must be used sparingly to be effective. (ABL)

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LEGAL ADVOCACY AND JUVENILE JUSTICE

Negotiations with Public Officials
over Juvenile Justice Problems

Prepared for

The Office of Juvenile Justice
and Delinquency Prevention

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INTRODUCTION: THE YOUTH LAW CENTER

The Youth Law Center is a public interest law office which was formed as a non-profit corporation in 1971 to provide legal education, advice, counsel, representation, and general assistance in reform of the law regarding the rights of minors.

Since September, 1978, the Center's primary activity has been the Juvenile Justice Legal Advocacy Project. The Project operates under a grant from the Office of Juvenile Justice and Delinquency Prevention Act. Staff, consisting of eight attorneys and support staff, work to implement the purposes and goals of the Juvenile Justice and Delinquency Prevention Act. These include:

1. Removal of children from adult jails;
2. Elimination of secure confinement for status offenders;
3. Correction of harsh and illegal conditions of confinement;
4. Provision of community-based treatment facilities for children in the juvenile justice system;
5. Protection of constitutional and civil rights of children during juvenile court procedures; and
6. Abolition of practices in the juvenile justice system which discriminate against children on the basis of race, sex, or physical or mental disability.

Under the grant from the Office of Juvenile Justice and Delinquency Prevention, staff attorneys focus activities in seven "target" States: Arizona, Colorado, New Mexico, North Carolina, Oregon, Utah, and Washington. Activities include assisting local legislators in drafting and analyzing proposed legislation; working with local and State officials in identifying particular problems in the State's juvenile justice system, and developing workable solutions; providing legal and other assistance to local community groups and children's advocates; and, when other advocacy techniques are unsuccessful, litigating in Federal and State courts to protect the rights of children.

In addition, at the request of local juvenile advocacy groups in Alabama, California, Connecticut, Kentucky, Maine, New Jersey, Ohio, South Carolina, and Texas, staff attorneys are working on specific problems in those States. The issues include deinstituitonalization of juveniles in the juvenile justice and mental health systems (California, South Carolina); abuse of children in private residential facilities (Connecticut, Maine); incarceration of children in adult jails (Alabama, California, Kentucky, Ohio, Texas); and administrative transfers of juvenile offenders to adult corrections institutions (Connecticut, New Jersey).

The Youth Law Center has developed a specific procedure of investigating and negotiating juvenile justice problems. This procedure enables them to obtain information about a problem before taking what might be precipitous action, and assists them in attempting to resolve problems through discussion and negotiation, without resorting to litigation. Although this negotiation "model" is specifically keyed to legal issues, much of the following discussion will be relevant to non-legal advocacy groups concerned with a wide range of juvenile justice issues.

RESEARCH AND INVESTIGATION

Comprehensive research and investigation are essential foundations for any effective advocacy. Without a thorough understanding of the issues involved (as well as the politics and personalities of the key officials), it is impossible to maintain an informed and credible posture in negotiations. This is true whether the issue is removal of children from a county jail, or creation of community-based programs for status offenders, or the effects of proposed juvenile court legislation.

Research and investigation generally take three forms. First, is research of all applicable laws on the issue, including Federal and State statutes, codes regulations and court decisions. Second, is meeting with State and local officials, and other people knowledgeable about the issue, including juvenile court judges, sheriffs, county commissioners, probation officers, prosecutors, public defenders, directors of divisions of youth services (and similar State agencies), legal services attorneys, members of community advocacy groups, and local civil rights attorneys. Finally, to the greatest extent possible, one should conduct site visits to observe and inspect specific facilities, such as jails or detention centers.

The research and investigation stage may take a considerable amount of time and effort, but it pays big dividends. It insures that advocates can make intelligent and realistic strategic decisions, and it helps to convince public officials that they are dealing with people who are careful and committed in their approach.

IDENTIFICATION OF CRITICAL ISSUES

The second step in the process is identifying those issues which should be pursued. Like all public interest programs, this project has limited resources. Consequently, it must consider several factors in determining which issues to pursue. First, the project tries to confront problems that affect the greatest numbers of children, especially issues at State training schools, large detention centers, and jails where large numbers of juveniles are incarcerated. Second, the project tries to confront policies and practices which represent the most flagrant and outrageous examples of mistreatment of children. Repeated physical assaults on children by institution personnel, detention cells without

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toilet facilities, use of cages to isolate children who misbehave, and denial of basic necessities such as shoes, toothpaste and soap, are examples of practices which have been encountered. Third, the project tries to determine where advocacy efforts will have an impact beyond the specific problem: for example, where advocacy efforts to remove children from one county jail will assist the resolution of the same problem in other counties of the State.

In addition, the project tries to work on problems where it is possible to achieve a resolution in a reasonable period of time, a matter of months rather than a matter of years. The project attempts to measure the political costs and benefits of advocacy activities, locally, Statewide, and nationally, in terms of community education, support for similar activities in other regions, and potential backlash among local and State public officials.

Each type of institution may present its own type of issues. For example, the confinement and detention of children in jails actually presents four major issues. First, are the conditions in the jail acceptable and appropriate, in terms of heat and light, ventilation, hygiene, food, toilet articles, linen, laundry, garbage, privacy, recreation, education, medical care, psychological services, and adequacy of trained staff? Second, are children appropriately separated from adults in the facility, during intake, sleeping, meals, recreation, transportation, and medical care? Third, are children detained in secure confinement only when they are a real danger to themselves or others, or are status offenders or minor offenders also being locked up? Fourth, do State and local officials provide and utilize alternative placements in the community which are less restrictive than secure detention? Children's advocates are encountering these issues in virtually every State in the nation, as State and local officials work to comply with the mandates of the Constitution, the Juvenile Justice and Delinquency Prevention Act, and State statutes.

DEVELOPMENT OF SOLUTIONS

After conducting basic research and investigation, and identifying issues to be pursued, the next step is to develop a series of alternative solutions. The particular solutions, of course, will depend upon the specific problems. The important point to remember is that a single problem may be susceptible to several solutions. Thus, problems of over-detention of juveniles and improper conditions of confinement may be overcome by any or all of the following:

1. Development of new detention criteria by the Division of Youth Services, the juvenile court probation department, the juvenile court judges, prosecutors, public defenders, or all or any combination of such individuals;
2. Development of architectural solutions, either by modifying existing detention facilities, or by renovating other buildings in the community;
3. Addition of new staff to the facility, or provision of specialized training in juveniles' problems to existing staff;

4. Execution of contractual arrangements with local boards of education, psychological service agencies, and physicians to provide services needed within a facility;
5. Creation of cooperative arrangements with neighboring counties to share use of appropriate detention facilities and alternative community placements.

Other alternative solutions might include development of new local or Statewide administrative regulations, or proposal of new State legislation.

NEGOTIATIONS WITH PUBLIC OFFICIALS

Children's advocates should negotiate with public officials only after completing the preceding three steps of the process. In negotiating, advocates should keep in mind the following points:

1. Be knowledgeable--demonstrate to the public officials that you are fully informed on the issue.
2. Be specific--tell the officials exactly what is wrong, and what should be done to correct the problem.
3. Be creative--suggest several alternative solutions and, if possible, let the officials choose which solution they prefer.
4. Be resourceful--suggest several sources for the services or expertise required to correct the problem (e.g., Community Research Center can provide technical assistance, including architectural expertise; local experts, universities, and citizen groups can provide a range of services and expertise).
5. Be aware of fiscal restrictions--tell the public officials how much the solutions will cost, and remember that this is the era of shrinking budgets.
6. Be firm--establish specific dates for responses on particular issues, and do not be put off with the promise that officials will do something about the problem "as soon as possible."
7. Be flexible--recognize that public officials have to answer to the voters, as well as fulfill their responsibilities under the law. Do not paint them into a corner; instead, try to be supportive as they look for realistic solutions.

THE PROPER ROLE OF LITIGATION

In general, litigation is a poor way of solving problems. It is expensive, time-consuming, and may lead to very unsatisfactory results when judges are over-cautious or even hostile to plaintiffs' civil rights claims. From the plaintiffs' point of view, the major advantages of litigation are that it forces officials to confront a problem directly; it brings all responsible officials together in a single forum (the Federal court); and it may result in judgements or money damages and attorneys' fees against the officials and

the city or county. Litigation is a drastic step in advocacy efforts and should always be viewed as such. It often polarizes and hardens people in the positions on a problem. Thus, it may be directly counterproductive to efforts to negotiate, since negotiations can only be successful when the parties maintain some flexibility. In addition, litigation often produces considerable antagonism among public officials who are named as defendants in the lawsuit.

For all of these reasons, litigation should only be used as a last resort, when all attempts at negotiation have proven unsuccessful. It is a necessary weapon in the advocate's arsenal, the ultimate option if public officials refuse to change unlawful practice, but it must be kept in reserve and used sparingly if it is to be effective.